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NOV 15 2007

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
RAHMAT ABDHIR et al  
Defendants.

No. CR-07-00501-JF (HRL)

**[PROPOSED] PROTECTIVE  
ORDER PURSUANT TO SECTION 4  
OF THE CLASSIFIED  
INFORMATION PROCEDURES  
ACT AND RULE 16(d)(1) OF THE  
FEDERAL RULES OF CRIMINAL  
PROCEDURE**

SAN JOSE VENUE

This action is before the Court on the Government's First Classified *In Camera*, *Ex Parte* Motion for a Protective Order Pursuant to Section 4 of the Classified Information Procedures Act, 18 U.S.C. App. 3, and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, supporting memorandum and accompanying exhibits (hereinafter, the "Submission"), filed with the Court Security Officer or her designee on November 9, 2007.

1 After *in camera*, *ex parte* inspection and consideration of the Submission, the Court finds,  
2 pursuant to Section 4 of CIPA and Rule 16(d)(1), that the Government's Submission contains  
3 classified information that requires protection against unauthorized disclosure for reasons of national  
4 security. Specifically, the Court finds that disclosure of the Classified documents to the defense, or  
5 to the public, reasonably could be expected to cause serious damage to national security.

6 The First Amendment right of access to court documents may be curtailed in favor of a  
7 compelling governmental interest provided that the limitation on access is "narrowly tailored to serve  
8 that interest." Globe Newspaper Co. v. Superior Ct., 457 U.S. 596, 606-607, (1982); see also, Press-  
9 Enterprise Co. v. Superior Ct., 464 U.S. 501, 510 (1984) ("The presumption of openness may be  
10 overcome only by an overriding interest based on findings that closure is essential to preserve higher  
11 values and is narrowly tailored to serve that interest."); Nixon v. Warner Communication Inc., 435  
12 U.S. 589, 598 (1978) (common law right of access may be outweighed by an important competing  
13 interest). The Court finds that the Government's interest in protecting the national security and  
14 preventing the unnecessary dissemination of classified information outweighs the defendant's and/or  
15 the public's right of access to these materials. See, Haig v. Agee, 453 U.S. 280, 307 (1981) ("[N]o  
16 governmental interest is more compelling than the security of the Nation."); Snepp v. United States,  
17 444 U.S. 507, 509 n.3 (1980) ("The Government has a compelling interest in protecting both the  
18 secrecy of information important to our national security and the appearance of confidentiality so  
19 essential to the effective operation of our foreign intelligence service.").

20 The Court further finds that the Government's Submission is so interrelated with classified  
21 information, as to make impracticable the filing of meaningful redacted materials that do not divulge  
22 classified information. No less reasonable alternative to closure and sealing will protect the  
23 Government's interest in preventing the unauthorized dissemination of this information, and this  
24 sealing order is drawn as narrowly as possible under the circumstances. The Government, in its  
25 motion and Submission, seeks a protective order against disclosure of certain classified information  
26 to the defense because that information is not discoverable under applicable law. Disclosure of the  
27 motion or accompanying materials to the defense or the public would defeat the Government's  
28 purpose in seeking a protective order.

1 Therefore, IT IS HEREBY ORDERED, that the Government's Submission may be filed *ex parte*  
2 for *in camera* consideration and shall be sealed and maintained in a facility appropriate for the  
3 storage of classified information at the identified level by the Court Security Officer as the designee  
4 of the Clerk of the Court, in accordance with established security procedures, until further order of  
5 this Court.

6 After *ex parte, in camera* inspection and consideration of the Submission,

7 IT IS HEREBY ORDERED THAT the Government's motion is GRANTED pursuant to Section  
8 4 of CIPA and Rule 16(d)(1).

9 The Court finds that the classified information sought to be protected is either not discoverable  
10 under Brady v. Maryland, 373 U.S. 1194 (1963), Giglio v. United States, 405 U.S. 150 (1972), and  
11 their progeny, or Federal Rule of Criminal Procedure 16; or that such discovery value is outweighed  
12 by the potential danger to national security that might ensue after disclosure.

13 IT IS HEREBY ORDERED that the Government need not disclose to the defense the classified  
14 materials described in Parts V-VI of the Submission.

15 IT IS SO ORDERED, this 15th day of November, 2007.

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19 HONORABLE JEREMY FOGEL  
20 UNITED STATES DISTRICT COURT  
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